

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GENERAL EMPLOYEES TRUST FUND
and BOARD OF TRUSTEES OF
GENERAL EMPLOYEES TRUST FUND,

Petitioners,

V.

YUL HERMES, an individual,

Respondent.

Case No. 14-cv-04054 NC

**ORDER GRANTING MOTION
FOR LEAVE TO FILE A FIRST
AMENDED PETITION TO
CONFIRM ARBITRATION
AWARD**

Re: Dkt. No. 36

Pending before the Court is petitioners' motion for leave to amend their petition to confirm arbitration award to name an additional respondent. Dkt. No. 36. The Court finds the motion suitable for resolution without oral argument, *see* Civ. L.R. 7-1(b), and GRANTS the motion for the reasons set forth below.

This is an action brought by petitioners General Employees Trust Fund and Board of Trustees of General Employees Trust Fund to enforce an arbitration award against respondent Yul Hermes on an alter ego theory. Dkt. No. 1. The original petition alleges that American Empire Building Maintenance Corporation (“Employer”) has failed and refused to comply with an arbitration award and is, therefore, in breach of collective bargaining agreements. *Id.* ¶¶ 37-39. The petition alleges that, on February 3, 2014, the Employer filed a Chapter 7 Bankruptcy petition. *Id.* ¶ 42. The bankruptcy case was closed on March 7, 2014. Dkt. No. 36-2. Petitioners filed this lawsuit on September 5, 2014, to confirm the arbitration award against respondent Yul Hermes, the President, Chief

1 Executive Officer, Chief Financial Officer, and Director of the Employer, on an alter ego
 2 theory of liability. Dkt. No. 1 ¶¶ 8, 44-57. The original petition did not seek to enforce the
 3 arbitration award against the Employer. *Id.* ¶ 43. Petitioners now request leave of Court,
 4 under Federal Rule of Civil Procedure 15(a), to file a first amended petition to confirm
 5 arbitration award that will add the Employer, the party to the arbitration at issue, as an
 6 additional respondent.

7 The motion for leave to amend was originally filed on January 22, and subsequently
 8 refiled on January 30. Dkt. Nos. 33, 36. The deadline to amend pleadings and add new
 9 parties previously set by the Court is January 30, 2015. Dkt. No. 31. Respondent opposes
 10 the motion primarily on the grounds that petitioners failed to seek the amendment within a
 11 reasonable time and that respondent will be prejudiced if the amendment is allowed under
 12 the current case schedule. Dkt. No. 43.

13 Federal Rule of Civil Procedure 15(a) provides generally that leave to amend the
 14 pleadings before trial should be given freely “when justice so requires.” Fed. R. Civ. P.
 15 15(a)(2). “This policy is ‘to be applied with extreme liberality.’” *Eminence Capital, LLC v.*
 16 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citations omitted). Under this rule,
 17 courts generally consider five factors when deciding whether to grant leave to amend: bad
 18 faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the
 19 plaintiff has previously amended the complaint. *Johnson v. Buckley*, 356 F.3d 1067, 1077
 20 (9th Cir. 2004) (citation omitted). “Not all of the factors merit equal weight. . . . it is the
 21 consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence*
 22 *Capital*, 316 F.3d at 1052 (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 185 (9th
 23 Cir. 1987)). “[D]elay, by itself, is insufficient to justify denial of leave to amend.” *DCD*
 24 *Programs*, 833 F.2d 183 at 186 (citations omitted). Moreover, “[t]he party opposing
 25 amendment bears the burden of showing prejudice.” *Id.* at 187.

26 The Court finds that petitioners’ motion for leave to amend is timely. The Court
 27 further finds that the proposed amendment is not futile, was not made in bad faith or after
 28 undue delay, and will not cause defendant to suffer prejudice. Accordingly, the motion for

1 leave to amend is GRANTED.

2 The Court will hold a further case management conference on March 3, 2015, at
3 10:00 a.m. in Courtroom A, 15th Floor, U.S. District Court, 450 Golden Gate Avenue, San
4 Francisco, California. At the conference, the Court will address the impact of the
5 amendment on the case schedule and whether any alterations of the schedule are
6 appropriate. The parties must meet and confer in advance of the conference and file jointly
7 their proposal(s) regarding any amendment to the case schedule by 12:00 p.m. on March 2,
8 2015.

9 IT IS SO ORDERED.

10 Date: February 23, 2015


11 Nathanael M. Cousins
12 United States Magistrate Judge

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28